

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SILICON GRAPHICS, INC.,

ORDER

Plaintiff,

3:06-cv-00611-bbc

v.

ATI TECHNOLOGIES, INC.,
ATI TECHNOLOGIES ULC, and
ADVANCED MICRO DEVICES, INC.,

Defendants.

Yesterday, plaintiff Silicon Graphics, Inc. moved to voluntarily dismiss from this lawsuit the remainder of its claims related to U.S. Patent No. 6,650,327 ('327), effectively ending its infringement case against defendants ATI Technologies, Inc., ATI Technologies ULC and Advanced Micro Devices, Inc. A trial will be held next week regarding defendants' invalidity counterclaim.

In addition, plaintiff had filed previously a motion to voluntarily dismiss an additional claim for infringement relating to U.S. Patent No. 6,885,376. Dkt. # 331. Defendants agree that the claim should be dismissed, but request that its dismissal include two conditions. First, defendants request that plaintiff reimburse them for all attorney fees

expended in defense of its claims related to the '376 patent, or, in the alternative that they would retain the right to seek payment of attorney fees under 35 U.S.C. § 285. Second, defendants ask to retain the right to argue at trial that plaintiff's misuse of defendants' source code bars this lawsuit. I conclude that the second condition is unnecessary, because the only issue remaining to be tried relates to invalidity, not infringement. I decline to award attorney fees at this time. Defendants may seek fees at the close of this case under 35 U.S.C. § 285.

Plaintiff's motion to voluntarily withdraw remaining claims related to the '376 patent is GRANTED.

Entered this 1st day of February, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge